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JOHN H. & MICHELLE R. SCHNEIDER

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING**

JIMMIE G. BILES, JR., MD,
a resident of Wyoming,

Plaintiff,

vs.

JOHN HENRY SCHNEIDER, JR., MD,
MICHELLE RENE SCHNEIDER,
husband and wife, both residents of Montana;
JOHN HENRY SCHNEIDER, JR., MD, PC
a Montana corporation; and JOHN DOES I-XXX

Defendants.

**DEFENDANTS' MOTION TO DISMISS
PURSUANT TO RULE 12(b)(6), F.R.C.P.**

COMES NOW the Defendants, JOHN HENRY SCHNEIDER, JR., MD, and

MICHELLE RENE SCHNEIDER, husband and wife, by and through their attorney, Laurence W. Stinson of Bonner Stinson, P.C., Cody, Wyoming, and pursuant to Rule 12(b)(6), F.R.C.P., move this Court for its Order dismissing Plaintiff's fifth cause of action, Conspiracy, against all Defendants. Accordingly, Defendants also seek dismissal of this case from federal jurisdiction and removal of the case to the Fifth Judicial District, Park County, State of Wyoming. The motion is made on the following grounds and for the following reasons:

1. On December 7, 2011, Plaintiff filed a *Complaint* in this matter against John Henry Schneider, Jr., MD, and Michelle Rene Schneider (hereinafter "Defendants" or "Defendants Schneider". Plaintiff has also identified John Henry Schneider, Jr., MD, PC, a Montana corporation as a Defendant in this action.

2. Defendants Schneider are Wyoming residents, not Montana residents. The corporation identified by Plaintiff does not exist; the corporation likely intended to be identified by Plaintiff is a defunct entity.

3. Plaintiff argues Defendants violated the federal Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1962 subsections (c) and (d). (*Complaint* ("C"), ¶ 121).

4. Plaintiff asserts Defendants have engaged in racketeering activity by conspiring to and committing mail fraud under 18 U.S.C. §1341 and wire fraud under 18 U.S.C. §1343. (C, ¶¶ 108-109).

5. Amongst others, Plaintiff makes the following factual allegations with respect to Defendants Schneider:

- Defendants intended the mailing at issue would deprive and defraud Plaintiff of money. (C, ¶ 44).
- In the course of their conspiracy and scheme, Defendants communicate with Ms. Fallon by using personal cell phones, hospital phones, personal email address, and hospital email address. (C, ¶ 55).
- Defendants' scheme was orchestrated and performed with the intention of causing economic hardship or economic ruin to Plaintiff. (C, ¶ 110).
- By disturbing or causing interference with Plaintiff's medical practice, Defendants stood to gain an economic advantage through an increased referral business. (C, ¶ 111).
- To disturb or cause the termination or interference of Plaintiff's medical practice, Defendants intentionally set out to destroy Plaintiff's reputation among Plaintiff's potential patient base. The Defendants also sought, thereby, to gain business for their entities. (C, ¶ 112).

6. Plaintiff claims the above-enumerated allegations, along with others, state a claim for relief against Defendants Schneider for conspiracy (Plaintiff's Fifth Cause of Action Against Defendants).

7. Plaintiff alleges these violations occurred because of a conspiracy between Defendants Schneider and Lisa Shaurette Fallon to defraud Plaintiff and Defendants Schneider used the United States Postal Service and interstate wire communications in furtherance of that scheme.

8. Lisa Shaurette Fallon is the sole Defendant in *Biles v. Fallon*, Civil No. 11-CV-294-J.

9. Fallon has accepted full and sole responsibility for the creation and mailing of the flyer at issue, which Plaintiff tacitly acknowledges. (C, ¶ 26).

10. Plaintiff's factual allegations have not satisfied the elements of federal mail fraud.

11. Plaintiff's factual allegations have not satisfied the elements of federal wire fraud.

12. Without a showing of mail fraud and/or wire fraud by Defendants, Plaintiff's allegation of a federal RICO violation has no merit.

13. The only allegation against the now-defunct Schneider corporation is vicarious liability on the part of its sole principal, Dr. Schneider. Thus, Defendant Schneider, P.C. is no more liable for a RICO violation predicated on mail and wire fraud than are Defendants Schneider.

14. The facts alleged by Plaintiff for his conspiracy cause of action do not state a claim against Defendants Schneider upon which relief may be granted.

15. Plaintiff's conspiracy cause of action is the only claim actionable solely under federal law; his remaining four claims are claims addressed under state law.

16. Accordingly, Plaintiff's conspiracy claim should be dismissed pursuant to Rule 12(b)(6), F.R.C.P.

17. In support of this motion, Defendants Schneider contemporaneously has filed Defendants' Brief in Support of Their Motion to Dismiss, which by this reference, is incorporated herein.

WHEREFORE, Defendants Schneider prays this court for relief in its favor and against Plaintiff as follows:

- a. Dismissing Plaintiff's claim of conspiracy against all Defendants;
- b. Dismissing Plaintiff's Complaint from federal jurisdiction and removal of the case to the Fifth Judicial District, Park County, State of Wyoming; and
- c. Granting such and further relief as the court deems equitable and just.

RESPECTFULLY SUBMITTED this 2nd day of February, 2012.

/s/Laurence W. Stinson

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CERTIFICATE OF SERVICE

I, Laurence W. Stinson, attorney Defendants Schneider, hereby certify that on the 2nd day of February 2012, I served a true and correct copy of the foregoing via the CM/ECF system to:

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